

## PATENT

## REMARKS

The Examiner has rejected claims 1, 2, 5-7, 10-15, 18-20 and 23-37 under section 102 (e) as being anticipated by Tran U.S. 6,735,449. Furthermore, Examiner has rejected claims 3, 8, 16, 21, 38 and 39 under section 103(a) for being unpatentable over Tran in view of Baker et al (US Publication 2001/0036238). Applicant has cancelled claims 1-39 without prejudice, and substituted claims 40-49 for allowance. No new matter has been added. Applicant believes claims 40-49 are in a condition for allowance over the cited art.

For rejecting claim 1, the Examiner notes that Tran discloses [calculating] a power up or power down command based the rate of change of SIR, thereby determining a gain level of the channel. Claimed invention as recited in claims 40-49 includes features and elements that are not disclosed nor suggested by the cited art relied upon by Examiner to reject claims 1-39. In particular, claim 40, for example, includes determining a gain level of a communication channel. The determined gain level is based on a minimum gain level and a gain margin. The cited references do not disclose, suggest nor teach determining the gain level based on a minimum gain level and a gain margin. Moreover, claim 40 includes determining the gain margin based on the rate of change of the C/I of the communication channel received at the receiver. A distinction is made between the gain margin and the minimum gain, which are not disclosed nor suggested by the cited art. Referring to FIG. 5, graph 500 depicts the minimum gain level for a channel to maintain adequate communication. The gain margin 590 is added to the minimum gain to determine the gain level of the channel. The level of this gain margin is changing based on the determined rate of change of the C/I, in accordance with an aspect of the invention. The cited references do not disclose, suggest nor teach determining the gain margin based on the determined rate of change of the C/I. There are more than one differences between the disclosure and teaching of the references and the claimed invention. The differences are not disclosed nor suggested by the cited references alone or in combination. Similar arguments are made in support of other claims.

Applicant believes claims 40-49 are allowable over the cited references, and request reconsideration of the final rejection made by the Examiner.

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## REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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